Supreme Court, U.S.
FILED
SEP 11 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 8, Original

In the Supreme Court of the United States

OCTOBER TERM, 1989

STATE OF ARIZONA, COMPLAINANT

v.

STATE OF CALIFORNIA, ET AL.

ON MOTION OF THE STATE PARTIES TO REOPEN THE DECREE TO DETERMINE DISPUTED BOUNDARY CLAIMS WITH RESPECT TO THE FORT MOJAVE, COLORADO RIVER AND FORT YUMA INDIAN RESERVATIONS

RESPONSE OF THE UNITED STATES

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RESPONSE OF THE UNITED STATES

The States of Arizona and California, the Metropolitan Water District of Southern California, and the Coachella Valley Water District (hereinafter the State parties) have moved to reopen the Decree in this case so that the Court may determine: (1) the disputed boundaries of the Fort Mojave, Colorado River and Fort Yuma Indian Reservations, and (2) the amount and priority of reserved water rights for any lands that the Court finds, upon resolution of the boundary disputes, to be part of the Reservations. The United States agrees that the Court now should fix the

disputed boundaries of the three Reservations for purposes of deciding whether the United States is entitled to additional reserved water rights for the three Reservations.

STATEMENT

In *Arizona* v. *California*, 373 U.S. 546 (1963), Special Master Rifkind determined the disputed boundaries of the Colorado River and Fort Mojave Reservations, concluding that the additional lands for which the United States claimed water were not part of those Reservations. However, the Court, at the urging of the State of California, declined to resolve the boundary disputes at that time, observing: "Should a dispute over title arise because of some future refusal by the Secretary to deliver water to either area, the dispute can be settled at that time." *Id.* at 601. The Court's original Decree in this case, which was entered in 1964, included an award of specified quantities of water for the Colorado River and Fort Mojave Reservations (as well as other Indian and federal reservations), but Article II(D)(5) provided that the quantities fixed for those two Reservations "shall be subject to appropriate adjustment by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined." 376 U.S. 340, 345. The Supplemental Decree entered by the Court in 1979 on the joint motion of all parties similarly provided that the quantities of water awarded for all five Indian Reservations "shall continue to be subject to appropriate adjustment by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined." 439 U.S. 419, 421.

Between 1969 and 1978, the Secretary of the Interior issued a series of orders that corrected the boundaries of the Fort Mojave, Colorado River, and Fort Yuma Reservations. The United States then filed a motion in this original action in 1978 for a supplemental decree awarding additional reserved water rights to the United States for the irrigable lands within the boundaries of the three Reservations, as recently ascertained by the Secretary of the Interior. In *Arizona* v. *California*, 460 U.S. 605 (1983) (*Arizona* v. *California II*), the Court held that the Secretary's administrative actions did not constitute "final determinations" of the boundaries of the three Reservations within the meaning of the Decree and Supplemental Decree, and that those actions therefore were insufficient bases for the Court to award additional water rights to the United States. 460 U.S. at 636-637. The Court also declined at that time to order that the disputed boundaries be determined in this original action. The Court noted that there ~~were~~ was then pending in the United States District Court for the Southern District of California a suit brought by the Metropolitan Water District (MWD) challenging the Secretary's administrative orders fixing the boundaries of the three Reservations, and the Court was unconvinced that the district court action was not an available and suitable forum for resolution of the boundary disputes. 460 U.S. at 637-639.

In the suit brought by the MWD, to which this Court referred in *Arizona* v. *California II*, the district court entered an interlocutory order on February 25, 1986, setting aside the Secretary's orders under the Administrative Procedure Act, 5 U.S.C. 706(2)(C) and (D). The district court also stated its intention to hold a trial de novo on the question of the location of the reservation boundaries. *Metropolitan Water District of Southern California* v. *United States*, 628 F. Supp. 1018 (S.D. Cal. 1986). The district court certified its order for interlocutory appeal. The Ninth Circuit accepted the appeal and held that the suit must be dismissed for lack of jurisdiction because the

Quiet Title Act (QTA), 28 U.S.C. 2409a, is the exclusive basis for challenging the United States' title to real property and exceptions to the waiver of sovereign immunity in the QTA forbid the relief sought by MWD. *Metropolitan Water District of Southern California* v. *United States*, 830 F.2d 139 (9th Cir. 1987). This Court affirmed the Ninth Circuit's judgment by an equally divided Court. *California* v. *United States*, 109 S. Ct. 2273 (1989).

DISCUSSION

The United States agrees with the State parties that this original action is the appropriate forum for judicial resolution of disputes concerning the boundaries of the Fort Mojave, Colorado River, and Fort Yuma Indian Reservations—at least where, as here, a judicial resolution is sought only for the purpose of finally quantifying the water rights that were reserved by the United States for those Reservations. The United States intervened in this original action to obtain a determination by this Court of the quantity of Colorado River water to which the United States is entitled for various federal reservations, including the three Indian Reservations at issue here. The United States then filed its motion for modification of the original Decree in 1978 to seek additional water for lands encompassed by the boundaries of the three Reservations, as ascertained by the Secretary of the Interior in his then-recent orders. As this Court has held, the United States reserved water for all land in those Reservations that is practicably irrigable. 373 U.S. at 600-601; 439 U.S. at 421-422. Accordingly, a determination of the amount of *land* that was reserved for the benefit of the three Tribes is a necessary step in the judical determination of the amount

of *water* that was reserved for that purpose. Since the latter question must be decided in this original action, it is logical that the antecedent question concerning reservation boundaries should be as well.

We recognize that in *Arizona* v. *California II*, the Court expressed the view that the boundary disputes should be resolved in another forum if possible, and the Court noted that MWD's suit against the United States in the Southern District of California might be an available forum for that purpose. But as a result of this Court's affirmance last Term of the Ninth Circuit's jurisdictional ruling in *California* v. *United States*, that alternative forum is unavailable. Especially in light of that ruling, we agree with the State parties' view that this original action now is the most appropriate forum for bringing to a prompt conclusion the longstanding disputes over the location of the boundaries of the three Reservations.[1]

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[1] In the typical case, the United States might seek to resolve a dispute concerning the boundary of public lands by filing a quiet title suit in federal district court against the persons who also claim an interest in the land. But because the State parties do not claim title to the lands that are the subject of the boundary disputes involving the three Indian Reservations, the United States cannot bring about a judicial resolution of those disputes by filing a quiet title suit against the State parties in federal district court.

The State parties are interested in the location of the boundaries only because of the effect that the boundary determinations will have on their water rights. It therefore is appropriate for any judicial resolution of the boundary disputes in this context to occur as part of the overall resolution of the competing water-right claims that are before the Court in this original action. If the boundary disputes were split off for separate resolution in a suit brought by the United States in federal district court, the ultimate resolution of the underlying water-rights controversy could be subject to extended delay resulting from trial and appellate proceedings and possible review in this Court—only to be followed by still further proceedings in this Court con-

We do not believe, however, that it is necessary for the Court to "reopen" its Decree in order to fix the boundaries of the Reservations for this purpose and to quantify the amount of additional water reserved by the United States. The Decree and Supplemental Decree expressly provide that the quantities of water awarded to the United States for the Reservations are subject to adjustment in the event that the boundaries are finally determined. 376 U.S. at 345; 439 U.S. at 421. This Court's determination of the boundaries, as part of its quantification of the United States' water rights, therefore would be pursuant to the Decree and Supplemental Decree, not in derogation thereof. Accordingly, no reopening of the Decree and Supplemental Decree is required.

If the State parties' motion is treated as a motion for the Court to make a final determination of the reservation boundaries and additional water rights as provided by the Decree and Supplemental Decree themselves, the United States joins in the State parties' motion and suggests that the matter be referred to a Special Master. The effect of our submission is to renew the motion filed by the United States in this original action in 1978 insofar as that motion sought an award of additional water rights to the United States for the lands that are the subject of the boundary disputes.[2] Hence there is no impediment to these further

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cerning the quantity and priority of water rights to be awarded for any additional lands that were found in the separate proceedings to be part of the Reservations. By contrast, all necessary determinations can be consolidated in a single proceeding in the original action in this Court.

[2] Of course, in light of *Arizona* v. *California II*, *supra*, we do not suggest, as we did in 1978, that the Court should give conclusive effect for present purposes to the Secretary's administrative determinations of the boundaries of the three Reservations.

proceedings because of lack of consent by the United States to be sued.[3]

CONCLUSION

The State parties' motion should be granted insofar as it requests this Court (1) to fix the disputed boundaries of the Fort Mojave, Colorado River, and Fort Yuma Reservations for purposes of determining whether the United States reserved water for those Reservations in addition to that awarded in the Decree and Supplemental Decree, and (2) to determine the amount and priority of any further water rights reserved by the United States. We suggest that the matter be referred to a Special Master for the receipt of evidence and submission of a report and recommended decree.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

SEPTEMBER 1989

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[3] In order to expedite resolution of the underlying water-rights controversy, the trial record developed before Special Master Tuttle may be used as an evidentiary basis for the determination in further proceedings of the amount of practicably irrigable acreage for which the United States claims additional water rights. The State parties have made a similar suggestion. See Brief in Support of Motion at 10 n.5.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1989—241-699/00414